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OHIO PENITENTIARY,

IN RELATION TO AMENDING THE LAWS FOR THE
PUNISHMENT OF CRIMES.

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THE HERBARIUM

AND THE GARDEN

OF THE UNIVERSITY OF CAMBRIDGE

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REPORT.

OFFICE OF OHIO PENITENTIARY,
March 8th, 1850.

Gentlemen of the House of Representatives:

In reply to the resolutions passed by your honorable body on the 26th of March last, and also in reply to a similar resolution passed 27th of February, ult., I here present the result of such enquiries as I have been able to make; and also such thoughts—the result of some experience and reflection—as occur to me, touching the expediency of amending our laws for the punishment of crimes.

The preamble and resolutions passed March 26th, 1849, are as follows:

“WHEREAS, The punishment of crime by confining the convicts in the Penitentiary of the State, at hard labor, can only be justified on the ground that society is bound to protect itself, and its individual members, against fraud and violence; and upon the further ground, that such confinement is intended to correct and improve the moral and industrial habits of the criminals, so as to reform them into useful and honest citizens; and

“WHEREAS, The confinement for a certain time, has, to a great extent, failed to effect the necessary reformation of convicts; and

“WHEREAS: A system of punishment, inducing convicts to a fair consideration of the benefits of honest industry, by securing to voluntary exertion a proportionate reward, seems to be better calculated to reform vicious habits, and transform the idle into industrious and moral men, than the mere confinement at hard labor without any inducement to voluntary exertion; therefore

“Resolved, That the Warden of the Penitentiary, is hereby requested to enquire into the expediency of so amending the laws for the punishment of crimes, that the convict be sentenced to perform a certain number of days’ work, instead of serving a certain number of years; substituting about three hundred days’ work, for one year’s confinement at hard labor, under our present criminal code.

“Resolved, That said Warden is hereby requested to report the result of his enquiry, on this subject, to the next session of the Legislature.”

This proceeding on the part of our General Assembly, had its origin, no doubt, in a sincere and philanthropic desire to devise some plan for reforming the vicious, to mitigate the severity of punishment, and at the same time, secure the just ends sought to be attained by criminal enactments, namely : protection and safe-guards for life and property.

The proposition propounded by the resolutions of the General Assembly, is an important one, and deserving, not only on account of its intrinsic merits, but from the source whence it emanates, an extensive enquiry, patient thought and reflection, and the application of experience in regard to the operation of systems of prison discipline, in order to present a report of any value, or to meet in any desirable degree, the views of the Legislature.

I regret that circumstances have prevented me from giving the subject that extended consideration, which, perhaps, was expected. I had intended to visit the penitentiaries of several of the States, and by personal observation and enquiry, to have learned something of the practical operation of different systems of prison discipline ; and to have embodied the results of my investigations, in this report, to aid in reaching some satisfactory conclusion, upon the point suggested in the resolutions. But the extraordinary sickness and mortality in the prison, occasioned by the prevalence of the cholera, covered the entire period of time which I had set apart for these personal investigations in distant States ; and hence I am not so well prepared to answer the demand upon me, as could be desired.

The idea of issuing a circular, occurred at a late date; and I accordingly addressed a circular to many individuals, distinguished by their philanthropy, and by their experience in prison discipline. A few answers only have been received to the circular, owing, doubtless, to the fact, that the Legislature convened so soon after its date, that the individuals addressed, supposed they could not reply in time for the report.

I here embrace the opportunity to tender my acknowledgments to those distinguished and philanthropic gentlemen, who have replied to my circular ; and I herewith transmit their replies as worthy of grave consideration.

From these replies, as well as from general observation, the gratifying fact is disclosed, that the eminent, the pure minded, the humane, are not unmindful of the fallen, the degraded, the vicious, the criminal, the vile. They seem to remember that they are but men, and that nothing which pertains to humanity is foreign from them.

Happily, the impression is giving way, that man once fallen is forever lost. The tone and temper of society in regard to criminals is rapidly changing. The benignant eye of Philanthropy, has pierced the gloom of the prisoner's cell. The voice of kindness and encouragement has broken upon his ear, and he feels that he is not entirely cut off from the sympathies of his kind ; and hope and motive springs up in his darkened and depraved mind, and the heart indurated by crime and wickedness, is touched and softened.

Time was, when the criminal of high or low degree, was cut off without sympathy and without regard. He was shunned, dreaded and detested like some rapacious beast of prey. The thought of his reclamation and restoration to society, seemed never to have occurred ; a miracle would as soon have been expected. Criminals thus regarded, were thrown promiscuously into crowded, filthy, ill-provided prisons, to herd together, to fester in their own vice, shame and depravity, sinking and debasing each other lower in moral turpitude.

But a change has been wrought. The "science of prison discipline" is having its due importance awarded to it. Prison associations are springing up in the eastern cities, and their benign influence is beginning to be felt in the Western States.

There has been a great and rapid change in the minds of the people of our own State in this respect. A deep sympathy prevails among all classes of our citizens in behalf of the incarcerated convict. Not that sickly sympathy which would relax the force of just and due punishment, but that heartfelt humanity which recognises the condemned criminal as a *man*, and admits the possibility of his reclamation ; and puts forth a generous and disinterested effort for that end. The earnest, the almost sublime enquiry then is : *How can the necessary severity of the prison discipline be tempered with mercy ?* This is well and honorable to our common humanity. This earnest enquiry, this praiseworthy solicitude, prevailing all over the country, must be productive of great good ; and must ultimately result in the establishment of a perfect system of prison discipline. The different systems now

in vogue, are but experimental. The subject is yet in its infancy.— But experiments and experience, will lead to important improvements. No system can be worthy of adoption which looks to punishment alone, which metes out so much vengeance for so much crime committed. That system can only begin to approach perfection, which looks to the reclamation and restoration of the fallen, to the confidence and privileges of society.

Many are so debased, obtuse and indurated in their moral perceptions, by a long course of vicious conduct and outrageous crime, as to be beyond the reach of any reclaiming influence. But this is not true of all,

My experience is, that the majority of convicts are susceptible of permanent influences from kindness, from sympathy, from being recognized as men, having claims upon our common humanity. All are not hardened in crime ; all are not steeped in the deepest dye of criminality.

The low and the ignoble are not alone represented in the convict's cell. Some of the very best families in the State, wealthy, intelligent and virtuous, have relatives in the Penitentiary. Husbands, fathers, sons, brothers, are there. This will continue to be the case. Scarcely any father of a son can feel that he is entirely safe ; for as good, as wise, as virtuous as he, have had their hearts riven by the conviction of a thoughtless, graceless, vicious son.

A large number of young men now in prison, are of respectable parentage ; and parents, brothers, sisters and other friends, mourn their fall, and share in their disgrace. And many a heart-broken wife as she gathers her little flock around her, mourns over the fate of a convict husband. And shall nothing be done to restore these, strengthened in virtuous purposes, to the arms of friends, to the enjoyment of once happy homes, and to the gradual confidence of society? Shall they not have an opportunity given to retrieve themselves? Can the discipline of the prison be so perfected as to accomplish this in a majority of cases? But how? The adoption of any new scheme will be but a matter of experiment. Theories may appear plausible, but experiment alone can bring them to the test.

The plan suggested in the resolutions might be fraught with much good; it might accomplish all that the most sanguine could expect. But from what little experience I have had, I am led to doubt whether

the multiplication of inducements to physical toil, will tend very greatly to mend the manners, and improve the heart.

The moral susceptibilities are to be reached and restored to healthy action in some other form.

The plan proposed in the resolutions, of working a certain number of days for a year, will readily present many difficulties and objections. Some of these will be found stated with precision and force in some of the letters herewith transmitted. And yet intelligent men in theorizing upon the subject, without the benefit of an experimental test, may properly enough differ in their views on this subject. I do not say the plan proposed is not worthy of a trial. It might accomplish more than I should expect, and indeed come up to the expectations of such as have most confidence in it. But if the proposed measures should be adopted, it would be necessary to make many other changes in the discipline of the prison, or it must needs fail of beneficial results. To offer suggestions, however, on this point, would be going beyond what the resolutions contemplated, and I therefore refrain. I am the more influenced to this, by the fact, that my limited experience in prison discipline, suggests many objections to the plan proposed.

If a convict were permitted to do two days' work in one, he might utterly prostrate his health, and those who failed to do as much, would be dissatisfied—complaints of unfairness would be felt or made; there must necessarily be different kinds of work, which would not always be equally apportioned with precision—dissatisfaction would ensue, which would be likely to have an influence upon the good order and cheerful subordination of the prison. There would be as many, probably more, discouraged than encouraged by this system.

Again, a convict might become diseased after sentence and be unable to labor, or he might become disabled for life by some accident. In such cases, the proposed plan would operate unequally. It may be said, the law should provide for such cases. In that event, the convict would many times have a powerful motive to practice deception, or even to maim himself. Such things have been resorted to.

On the other hand, a really diseased, debilitated convict, from his anxiety to lose no time, might even feign a measure of health which he did not possess, and thereby peril life itself. It certainly would not

be a humane act to put a man in close confinement in the midst of such inducements to hasten his release. Neither physically, mentally nor morally, could he be thus benefited.

If the proposed plan were adopted, it should be made to apply to all now in prison, for the convicts of a single prison, should be all put upon the same regimen. But that system only, can be desirable, which will apply with just exactitude to all; to the old, the young, the feeble, the athletic, and even to the prisoner for life. On the plan proposed, the infirm could not have an equal chance with the rest; hence, the effect might be deleterious upon the discipline and due subordination of the prisoners.

For the reasons above stated, my enquiries have not been as complete and extensive as I desired and intended. Had they been, I might have come to a different conclusion from that to which my own limited experience and enquiries conducted me.

My present convictions are, that the plan proposed in the resolutions, substituting days' works as the measure of incarceration, should not be adopted, unless accompanied with alterations and changes of a minute and extensive character in the mode of prison discipline. I should hardly feel at liberty here, and under the present call, to go into a detailed statement of the changes which would be necessary in order to make the plan reasonably harmonious in operation, even were I now prepared to do so.

I am the more constrained to withhold suggestions of this character, from the fact, that as at present advised, the plan contains in my judgment, radical defects; the most important of which, have been, perhaps, already noticed.

All of which is respectfully submitted,

LAURIN DEWEY,

Warden.

CORRESPONDENCE.

WARREN, O., November 25, 1849.

SIR:—Your circular of the 5th inst., enclosing House Resolutions of March 16th, 1849, has just been received.

I have not time to reply at any length; still the subject is of sufficient importance to justify a reply, although I have only mere suggestions to make, or rather to submit for the consideration of those who will have time to reflect upon the subject.

1st. I do not believe there is much prospect of reformation of a criminal when all motive is cut off. The human mind is so constituted as to need a stimulus for any efficient action, be it good or bad. The vice of our penitentiary system, as a school of reformation, seems to me to be a want of the proper stimulus. How to remedy the defect in the best manner is a problem quite difficult of solution.

In the reflection which I have bestowed upon the subject, it has occurred to me, that if the sentences of the courts upon conviction, could be uniformed and proportioned to the grade of crime, and in general, much less severe than are now frequently inflicted, and also the pardoning power restricted to cases of doubtful crime or supposed innocence, it would be a very great improvement.

Then as a motive to industry and good behavior, I would provide grades of merit.

Say that each successive period of 300 days of industry and good conduct, should count for one year's confinement, absolutely and without any pardon.

And as a farther inducement I would allow to every convict the avails of his labor after deducting the expenses of the State.

I look upon industry as a most efficient obstacle to vice. Its opposite, (idleness,) is the mother of evil. Hence, when a convict acquires a habit of industry, and exhibits it, he shows by an overt act, that he has made some progress in the work of personal reformation. Surely that system of prison discipline, must be woefully defective, that furnishes no sufficient motive for acquiring industrious habits, and for good behavior.

The force of fear and rigid discipline may keep convicts in order, and at work; yet there is no soul to that species of morality or in-

dustry. It is but sullen labor and obedience. There needs be something of good will and cheerfulness in it. In some sort or other, let these objects be effected, and the chance of making the penitentiary a place of reformation as well as punishment, will be increased most mightily. Necessarily there should be provision made for sound, moral instruction. That is however, now a most efficient part of the system, (at least in theory,) and I need say no more about it.

Very Respectfully, Yours,

M. BIRCHARD.

BOSTON, November 27, 1849.

MY DEAR SIR:—A variety of occupations has hitherto prevented me from acknowledging the receipt of your letter of the 5th inst.—I think it no more than fair to state at the outset, that I do not consider my opinions upon the subject of prison discipline as of any value whatever. The science of prison discipline, for it may now fairly be called a science, is experimental purely, and can only be advanced by the observations of experts, and the inferences drawn from those observations by unbiassed thinkers. The speculations of a person familiar with the subject only through books, and observing men only in their normal state, can do but little for it. I should have hardly answered your letter but for the apparent discourtesy which such neglect would have involved.

As to the particular point to which your enquiry is directed, the expediency of substituting a certain amount of labor for a certain period of time of labor—I not only see no objection to it, but should think it certainly advisable as an experiment, provided you are sure of being able to meet and obviate the practical difficulties which you have doubtless considered; including its possible effect upon the government and discipline of the Institution. But, as to the immediate moral effect upon the prisoner himself, I confess I feel somewhat skeptical. I do not see the relation between the two things. A considerable portion of the convict population of the country, I hold to be so far gone in evil courses, as to be incapable of permanent reformation; and that whatever evidence they may give of it, is only that cheap virtue which exists merely in the absence of temptation. And as to that portion which is susceptible to moral reformation,—the proportion of which probably varies in different prisons—I do not see that labor in itself can exert a distinctly reformatory influence. Regular labor, and regular habits, generally put the mind in a fit state for the reception of moral influences, but are not themselves distinct moral influences. Indeed

it is the distaste to labor—the wish to enjoy the fruits of toil without toil, which puts most convicts into prison. Moral reform is to be effected by arguments and considerations addressed partly to the understanding, and partly to the conscience, by convincing the prisoners that wrong doing is not only a crime, but a mistake. Much may be done by sound religious teaching and judicious intellectual training; one awakening new motives, and the other supplying fresh resources; but success in this respect will depend very much upon the character of the particular teacher or chaplain. Much will depend also upon the nature of the discipline by which the prisoner is governed, which should always be parental, and never forgetting the common humanity of the convict and his keeper. A single act of wanton or excessive punishment might neutralize all the good influences of many months, by the irritation of mind, and the revengeful feelings which it would call forth.

In conclusion, I have only to repeat, that the experiment, as to which you enquire, is certainly worth the trying, and you have my best wishes that you may be able to deduce something from it, which may help to advance the science of prison discipline.

I remain with sincere regard,

Your ob't servant,

GEO. S. HILLARD.

NEW YORK, December 15, 1849.

DEAR SIR:—I have your circular dated the 5th ult. The principle embodied in the subjoined resolutions of the Legislature of your State, strikes me as not merely sound, but of great practical value. If I might venture to suggest any improvements in the details, I would propose:

1st. That *two hundred and fifty days* of faithful efficient labor, with forty well spent Sabbaths, should be held to constitute a year's confinement in the State Prison.

2d. That each day of inefficiency, through sickness or otherwise, should not count at all towards the satisfaction of the law's sentence.

3d. That each instance of insubordination, wilful idleness, insolence or other decided ill-conduct, should not merely count nothing towards the prisoner's discharge, but should count one day back, or be held to balance and efface one day's good conduct.

4th. That each instance of deliberate and serious contumacy, should offset and extinguish a week's good behavior.

5th. That participation in a conspiracy to escape, or to offer any kind of violent resistance to the prison authorities, should be punished by additions of one to three months to the term of the prisoner's sentence, according to the seriousness of the offence.

I think that these, or a part of them, would somewhat improve the workings of the principle in question. But with or without them, I am for it heartily.

Yours,

HORACE GREELEY.

WASHINGTON, December, 17, 1849.

DEAR SIR:—I have the honor to acknowledge the receipt of your letter of the 5th of November, in which you solicit my opinion upon a grave and important question of penitentiary discipline.

I have no practical acquaintance with any penitentiary in which the punishment of criminals is defined by days' labor, instead of periods of imprisonment with hard labor; and I cannot confide in my speculative opinions, without the aid of experience to offer for your consideration.

I confess that I do not perceive that the measure suggested in the enquiry, would be necessarily benign in its operation, unless excuses of ill-health and accident were allowed; and that, if such excuses were allowed, then it would seem to me probable, that there would be great danger of relaxation of discipline. But my opinion may very probably be affected by prejudice in favor of the existing system.

I am, with great respect,

Your obedient servant,

WILLIAM H. SEWARD.

BELLVILLE, December 24, 1849.

DEAR SIR:—I have received your circular of the 5th ult., together with the Resolutions of the Legislature appended thereto, in due course of the mail; but my business has so interfered as to prevent me from giving that attention to the subject which its importance demands.

The Legislature seems to have come to the conclusion that the confinement of convicts to hard labor in the penitentiary, has, to a great extent, failed to effect their reformation, and they propose to enquire whether the system can be so changed as to effect that object.

The first enquiry should be as to the fact (which seems to be taken as granted by the Legislature,) whether the system has failed, for it is more easy to find fault or condemn present systems than to prescribe remedies.

If in devising the present penitentiary system, it was expected that all the inmates of the prison, or even a majority of them, would be "changed into useful and honest citizens," then indeed the system has failed. I do not believe that this was expected, even by the most sanguine friends of this measure. It was, no doubt, expected that the confinement to hard labor, with proper restraints, accompanied with moral culture, that many of these offenders against the laws of God and their country, would be led to turn their thoughts inward, review their past lives, and thus become convinced of their errors. It was, no doubt, supposed that such reflections being thus forced upon them, might in many instances, produce sincere repentance, and induce them to form strong resolutions to amend their lives. That this is the result in numerous instances, I have no doubt. I believe many of them leave the prison with a full determination to conduct themselves in future so as to retrieve their lost characters, and become "honest, useful citizens." Nor have I any doubt that in many instances, these noble resolutions are strictly adhered to through their future lives. I am fully satisfied that not a few of these individuals, by their prudent and correct deportment after leaving the prison, have deservedly obtained the good will and esteem of their fellow citizens, and retained it to the end of their lives, who, had they never served a tour in the penitentiary, would have persevered in their wicked course to the end of their lives, and would have gone down to their graves abandoned vagabonds.

But it may be said that many return to their bad habits and again become inmates of the prison. This is no doubt true to some extent, but not so great an extent as many suppose. From an examination of the prison register, I think it will appear that second convictions of the same persons, will not exceed ten per cent. of the number released.

One object of the present penitentiary system, in the punishment of offenders, is to deter others from the commission of crime. It is contended by some, that in this respect, the system has failed. When we recur to the fact that there are in the State of Ohio, not less than fifteen hundred thousand persons of an age to commit crime, and that the convictions in the State have not in any one year, exceeded one hundred and fifty, I think it may well be claimed that some portion of the inhabitants have been deterred from the commission of crime by the fear of punishment.

But admitting that the present system has failed to a great extent in transforming the convicts into "honest men and worthy citizens,"

would the change proposed by the Legislature be likely to produce this desirable result? I am inclined to the opinion that it would not.

The proposition, as I understand it, is, that instead of sentencing the convict to hard labor in the penitentiary, for a certain number of years, that he be sentenced to perform a certain number of days of hard labor, allowing three hundred days for one year. By this plan, a prisoner of sound constitution and good health, might perhaps, shorten his term one-third by performing six days labor in four; but would he on that account leave the prison a more honest man or useful citizen? I doubt very much whether it would have any such tendency. Having performed the labor of twelve months in eight, he would be very likely to injure his constitution, and so impair his health so as to unfit him for earning his living by honest labor. But I would inquire what would be the effect of this plan upon prisoners with shattered constitutions and poor health. Would not their sentences be lengthened? This would surely be the case where a prisoner would be twelve days in performing six days' work. That there are many such prisoners, all persons acquainted with the past experience of the Ohio Penitentiary, know well. Perhaps it will be said that the Courts, in passing sentence, could determine on the ability of the convict to perform hard labor, and graduate the number of days' work to be performed according to such ability. A little reflection will satisfy any person that there would be much uncertainty in a rule of this kind. A man might be very stout and healthy at the time of trial, who might be quite otherwise in a few months or even weeks afterwards. Or he might at the time of his trial be very feeble, and a few months afterward be healthy and strong.

From these considerations, and many others which might be enumerated, I am decidedly of opinion that the change proposed, would have no salutary influence in the reformation of convicts.

I have no doubt, however, that the system might be improved, but in a different way.

The sentences of prisoners in my opinion are altogether too long. I would be in favor of reducing them to at least one-half, while at the same time, I would discourage as much as possible all pardons, except where there was a probability that the prisoner was not guilty.

I would prohibit the carrying on of any business within the penitentiary which requires persons to change their position from one point to another; and in short, make such provisions by law as would enable the Warden in the management of the prison, to prevent the prisoners from having communication with each other, and also prevent persons employed by the Contractors from holding conversation with the prisoners, or giving them the slightest information as to what was passing outside of the prison.

I would be in favor of affording every facility consistent with their sentence, in infusing into their minds correct moral principles. I would make it the duty of the Warden to notify the Governor (one month before the expiration of the term of each prisoner,) when his time would expire, and in such notice, specify what his character and

conduct had been while a prisoner, for the purpose of having him restored to his rights as a citizen, if his conduct had been good, but in no instance to restore where the conduct had been bad.

With these crude, hasty remarks, I remain,

Very truly yours, &c.,

JOHN PATTERSON.

Col. L. DEWEY, *Warden.*

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